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September 14, 1998

FEDERAL COMMUNICATIONS COMMISSION
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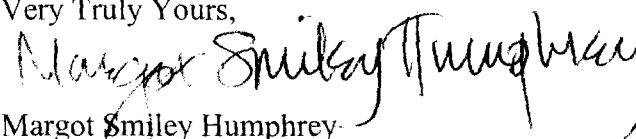
Re: CC Docket No. 96-45, DA 98-1691

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom or TDS), are an original and 6 copies of its comments on the Washington Utilities and Transportation Commission's and Twenty Rural Telecommunications Companies' Petition for Agreement, CC Docket No. 96-45.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,


Margot Smiley Humphrey

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Joint Petition for Agreement with Designation of)
Rural Company Eligible Telecommunications)
Carrier Service Areas at the Exchange Level)
And for Approval of the Use of Disaggregation)
Of Study Areas for the Purpose of Distributing)
Portable Federal Universal Service Support)
filled by: The Washington Utilities and Trans-)
portation Commission, Asotin Telephone Company,)
CenturyTel of Cowiche, Ellensburg Telephone Com-)
pany, CenturyTel of Washington, Hat Island Tele-)
phone Company, Hood Canal Telephone Co., Inc.,)
Inland Telephone Company, Kalama Telephone)
Company, Lewis River Telephone Company,)
Mashell Telecom, Inc., McDaniel Telephone Com-)
pany, Pend Oreille Telephone Company, Pioneer)
Telephone Company, St. John, Co-operative Tele-)
phone And Telegraph Company, Tenino Telephone)
Company, The Toledo Telephone Co., Inc., United)
Telephone Company of the Northwest, Western)
Wahkiakum County Telephone Company, Whidbey)
Telephone Company, and Yelm Telephone Company)

CC Docket No. 96-45

DA 98-1691

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION, INC.

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Telephone Company, and Yelm Telephone Company)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION, INC.

TDS Telecommunications Corporation , Inc. (TDS Telecom), files these comments, by its attorneys, on behalf of its 106 incumbent local exchange carriers (ILECs) in 28 states, including its three ILECs serving rural areas in Washington, Asotin Telephone Company, Lewis River Telephone Company and Mc Daniel Telephone Company. These comments, responding to the Commission's August 24, 1998 Public Notice inviting comment on the above-captioned joint

petition, urge the Commission to authorize disaggregation of federal high-cost support below the exchange area in the State of Washington on the terms requested by the petition. TDS Telecom agrees with the petitioning ILECs that approval of disaggregation of support should be a precondition for accepting the Washington Utilities and Transportation Commission (WUTC) designation of Eligible Telecommunications Carrier (ETC) service areas at the exchange level for multi-exchange rural ILECs in that state. Indeed, although this proceeding is confined to the specific situation in Washington, the need for disaggregation of support is by no means limited to setting state ground rules for designation of additional rural ETCs. In this case, Washington's rural ILECs should be able to secure disaggregation through a practical compromise with the WUTC to buffer designation of ETC service areas at the exchange level by providing for disaggregation of support to reflect cost variances within the exchange. This arrangement is a first step. However, TDS Telecom continues to support the Rural Telephone Coalition's meritorious pending requests for reconsideration of both the Commission's (a) denial of disaggregation for interim support, despite perverse incentives for entry to reap the resulting portable support windfalls and (b) harmful exhortation to states to designate ETC service areas for fractions of a rural ILEC's study area. The Commission should promptly approve the compromise worked out by the WUTC and rural ILECs here and speedily grant the reconsideration petitions pending for more than a year to permit disaggregation of the per-line support portable to a competitor and discourage service area designations that reward harmful rural cream skimming.

The Petition Fully Justifies the Relief Requested to Avoid the Anticompetitive and Adverse Universal Service Consequences of Basing Portable High Cost Support on Area-Wide ILEC Average Per-Line Support

The Joint Petition seeks to implement a compromise emerging from disagreement when the WUTC decided in December, 1997 (pp.1-5) to designate ETCs at the exchange level as a way to stimulate competition in rural areas. The designations apply even to rural ILECs for which the 1996 Act specified study area-wide designations unless the State and the Commission adopt a different service area after considering the recommendation of a joint board instituted under §410(c). To obtain the rural ILECs' acquiescence to these designations (p.5), the WUTC held workshops to decide how to disaggregate the ILECs' costs below the study area level. The ultimate purpose was to disaggregate each ILEC's study area-wide high cost support per line, made portable to the ILEC's competitors by §307 of the Commission's rules, to reflect the substantial cost differences within the ILECs' study areas.

The Joint Petition states (p.11) that, in developing a methodology to desegregate costs, "the WUTC and the rural companies concluded that there is a substantial variation in costs within exchanges" (as well as within study areas) that is "generally associated with loop length." Consequently, to reflect intra-exchange and exchange-to-exchange differences, the parties agreed to a joint request for this Commission's agreement to an integrated package including (a) the WUTC's service area designations, (b) waiver of the Commission's support "porting" method (p. 1) requiring the use of each ILEC's overall per-line support as the measure for support "ported" to its competitors for each customer served and (c) disaggregation of federal high cost support within each ILEC exchange into "core area" and "fringe area" per-line amounts, using a jointly developed methodology.

The Joint Petition correctly explains (p.13) that geographically varied (i.e. disaggregated) support is necessary to prevent harmful and unfair cream skimming. Geographic disaggregation of support counteracts a potential competitor's existing incentive to compete for customers in an ILEC's lower cost areas because it would receive windfall support based on the ILEC's higher study area-wide averaged support per line. Disaggregation would also alleviate the ILEC's consequent loss of disproportionate support whenever the competing CLEC wins a customer whose line is in a lower cost exchange or whose loop within an exchange is shorter than the exchange average and thus less costly to serve.

Approving the WUTC's decision to designate CLECs as ETCs for service areas smaller than the ILEC's study area without authorizing disaggregation would make the marketplace distortions and harm to universal service worse: The CLEC would be able to choose only the lowest cost exchanges to enter and could thus "compete" for high cost support based on the ILEC's average support per line including its high cost exchanges and longest-loop customers. The CLEC would get this windfall support without having to serve the entire territory for which the support is calculated. That outcome would plainly violate the Joint Petition's common sense and economically sound fundamental premise (p.13) that "[c]ompetitors should compete for customers, not for universal service support."

While the CLEC enjoyed its windfall, the ILEC would lose its average per line support for every below average cost customer the CLEC won in its low cost areas, thus leaving more costs to be borne by its customers in the outlying, highest cost areas. Creating upward pressure on the local rates most rural customers would have to shoulder in order to provide unnecessarily lavish support to CLECs serving lower cost customers is precisely the opposite of the purpose

and mandates of §254. Indeed, this loss of averaged support when a competitor takes over a customer with below average costs, robs remaining above-average cost lines of the support they need. That alone is enough to justify a general change in the Commission's rules to allow disaggregation of a rural ILEC's support well below the study area level, regardless what service areas a state designates for ETCs.

Portable interim rural ILEC support is already unlawfully skewed because CLEC's get the ILECs' support regardless of whether their own costs are high. Granting only part of the Joint Petition and reducing the geographic scope of a CLEC's universal service obligation as an ETC to less than the ILEC's would magnify the mismatch between what costs an ETC-designated CLEC incurs and the portable support it receives.¹ The requirement in §214(e) to provide and advertise all universal services throughout the service area makes sense only if the same area governs both recipients of support. The legislative history of the Senate provision from which the enacted ETC law was derived makes clear the intention that when more than one ETC is eligible to obtain support, "each additional carrier so designated must meet the same requirements with respect to service throughout the same service area"² In any event, for purposes of the area a competing carrier is required to serve to qualify for ETC status, the Commission explicitly ruled that a competing carrier, including a wireless carrier, should have to

¹ If some other state were to designate areas below the exchange size designated by the WUTC as the ETC service areas where CLECs can obtain averaged portable ILEC per-line support, the invitation to CLECs to profit from the regulatory support windfall would be even more harmful to the ILEC and its highest cost customers.

² Conference Report 104-458, 104th Cong., 2d Sess., p. 140 (describing the Senate-adopted predecessor provision).

serve the ILECs entire area to prevent cream skimming and “because rural telephone companies currently average such costs at the study-area level.”³

The three TDS Telecom ILECs in Washington are among the Joint Petitioners seeking approval of the compromise reached in the workshops. TDS Telecom supports them in urging grant of the negotiated compromise settlement. The results of the Washington cost disaggregation workshops confirm that it is contrary to genuine competition and undermines universal service and the reasonable rural/urban rate parity required by §254(b)(3) of the 1996 Act to provide an ILEC’s study area-wide average federal support per line as portable support for each customer served by a competing LEC (CLEC) that serves only the lowest cost areas or customers in a study area, an exchange, or within an exchange. The “core” and “fringe” area level of disaggregation within a rural ILEC’s exchange achieved by the methodology developed by the Washington workshop process is the minimum level of disaggregation necessary to begin to ameliorate the adverse effects and distorted market signals caused by shifting an ILEC’s average support per line to a competitor free to serve where per line costs are below the average.

TDS Telecom also wants to make clear its position on using a proxy model for the limited purpose of disaggregating high cost support below the study area level. The methodology for below-study-area and below-exchange-level geographic disaggregation of ILEC costs makes use of the BCPM model to avoid excessive administrative costs and burdens for rural ILECs in disaggregating support. The model has not been used to determine the level of

³ Federal-State Joint Board on Universal Service, Report and Order, FCC 97-157, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶189 (rel. May 8, 1997), appeal pending sub nom. in Texas Office of Util. Counsel, No. 97-60421 (5th Cir. filed June 25, 1997). A wireless carrier that could not serve an ILEC’s whole study area, explained the Commission “could supplement its facilities-based service with service provided via resale.” (Ibid.)

any carrier's costs or support. The ILECs' voluntary use of the model for the limited purpose described in the Joint Petition in no way indicates that the BCPM or any other proxy model has been shown to be lawful or valid for the fundamentally different purpose of measuring the costs of service or the amount of high cost support an ETC should receive. No proxy model has been validated for quantification of costs or support amounts for any ILEC, let alone for rural ILECs.

The compromise reached in Washington is a pragmatic way to resolve the particular situation presented here. Accordingly, TDS Telecom urges the Commission to grant the waiver and approve the disaggregation methodology the Joint Petition requests well before the effective date of the new service areas for competing ETC designation.⁴

Grant of this Petition, Essential to Protect Washington's Rural Consumers and ILECs,
Does Not Obviate the Pressing Need to Grant Pending Reconsideration Petitions to
Permit Nationwide Support Disaggregation and to Conform ETC Service Area
Designations to the Intent of the 1996 Act

As explained above, TDS Telecom and its three Washington ILECs support favorable action on the Joint Petition as a whole as a reasonable compromise reached in the particular circumstances of the WUTC proceeding on ETC service areas. However, TDS Telecom believes that the Commission should act as soon as possible on the petitions for reconsideration of the May 8, 1997 Universal Service Order⁵ that have been pending since July 17, 1997. In particular, TDS Telecom urges the Commission to modify §54.307(a)(2) of its rules, which currently

⁴ Consistent with the Washington rural ILECs' conditional request in the Joint Petition (fns.2 and 17), TDS Telecom urges the Commission to reject the WUTC's ETC service area designations at the exchange level unless it also grants the waiver and permits support disaggregation exactly as the Washington ILECs request.

⁵ Petition for Reconsideration of the Rural Telephone Coalition, CC Docket No. 96-45, filed July 17, 1997; United States Telephone Association Petition for Reconsideration and/or Clarification, CC Docket No. 96-45, filed July 17, 1997.

calculates portable support “by dividing the ILEC’s universal service support by the number of loops served by that ILEC” while the interim rural high cost support arrangements remain in effect. Instead, the rule should alleviate the distorted entry signals that invite CLECs to “compete” for windfall universal service payments because CLECs have such broad discretion about what markets, market segments and customers to target, where to build facilities or use subsidized resale of an ILEC’s highest cost loops and what prices to charge and advertise. The new rule should provide for disaggregation of support within an ILEC’s service area to target support payments more accurately based on the ILEC’s cost. Disaggregation to reflect differences within an ILEC’s study area and exchanges should be permitted at an ILEC’s option. Indeed, while the “core” and “fringe” intra-exchange disaggregation requested in the Joint Petition is a good start at making portable support more rational, ILECs should be allowed to disaggregate further below the exchange level or by creating density zones, using geographic units such as those used in proposed proxy systems (without accepting the proxy for any other use), or employ other reasonable means to align portable support more closely with the costs in the geographic units the CLEC serves.

The Commission should also rethink its exhortation to states to fragment ILEC study areas to reduce the universal service obligations associated with a CLEC’s ETC status. The Joint Board’s recommendation to use rural ILECs’ study areas for now⁶ better comports with the clear intent of Congress in §214(e) to restrict portable support in a rural ILEC’s area to CLECs that are willing to take on similar universal obligations to the carrier whose support they will capture for themselves and divert from supporting the ILEC’s universal service.

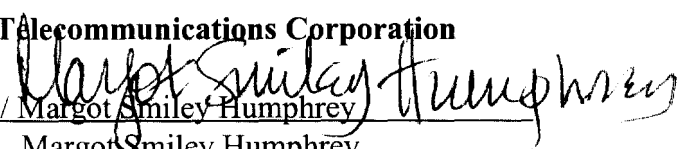
⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, ¶6 (1996).

Conclusion

The Joint Petition offers a pragmatic solution to the issue confronting the rural ILECs in Washington — the need to align portable support with the cost characteristics of the geography and customers served by a CLEC designated as an ETC. Therefore, the Commission should grant the requested relief in its entirety. Under no circumstances should the Commission deny or reduce the requested support disaggregation but approve the designated ETC service areas, thereby aggravating the dual problem of (a) providing averaged ILEC high cost support to a CLEC that can avoid serving the ILEC's higher cost areas and customers and (b) diverting an ILEC's average per line support while it retains the obligation and costs of serving the highest cost areas and customers. Finally, the Commission should act on the long-neglected requests for reconsideration, modify its rules to permit and encourage disaggregation of rural high cost support and clarify that states should adhere to the intent of Congress and the universal service mandates in the 1996 Act in designating any changes in rural "service areas."

Respectfully submitted,

TDS Telecommunications Corporation

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September 14, 1998

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing TDS Telecommunications Corporation Comments on the Inquiry Concerning the Deployment of Advanced Telecommunications, CC Docket No. 98-146, have been served on the parties listed below, via first class mail, postage prepaid on the 14th day of September, 1998.

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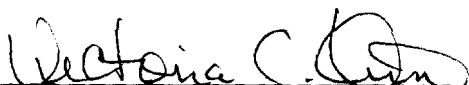
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